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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,130	04/02/2004	John Scott Heuvel	049220-9005-00	1491
23409	7590	05/23/2006	EXAMINER	
MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			GORDON, STEPHEN T	
			ART UNIT	PAPER NUMBER
			3612	

DATE MAILED: 05/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/817,130

Applicant(s)

HEUVEL ET AL.

Examiner

Stephen Gordon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 and 27-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 35-40 is/are allowed.
- 6) ☒ Claim(s) 1-9, 27 and 30-34 is/are rejected.
- 7) ☒ Claim(s) 28 and 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. In view of applicant's latest amendments filed 3-13-06, the previous objections to the specification and drawings are withdrawn.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, and 7-9, as newly amended, are rejected under 35 U.S.C. 102(b) as being anticipated by Giles.

Giles teaches a support structure for a transport vehicle including a frame base 32+, a stanchion 24,28+, and a cylindrical roller 20.

Regarding claim 1, the roller is capable of performing the recited function as broadly claimed. Additionally, in as much as the concrete section per se is not a positively recited element of the instant claimed combination, the functional/positional language relating thereto is given little patentable weight. Regarding the newly added language of claim 1, at least element 44 could be used as a support for a leg of a concrete section. Element 44 is movable between first and second positions as broadly recited via length adjusting section 42 and is readable on a supporting pad as newly broadly claimed. Again note, the device is capable of functioning as broadly recited, and in as much as the concrete section per se is not a positively recited element of the instant claimed combination, the functional/positional language relating thereto is given little patentable weight

Claim 2, note the first and second end rollers on the shaft through the opening in element 22 – figure 1 etc.

Claim 7, element 34 reads on the first bearing pad as broadly claimed.

Claim 8, element 36 reads on the second bearing pad and is deemed removable as broadly claimed.

Claim 9, the elongate passages underneath elements 24 define passages as broadly claimed and could receive forks of a fork device. Note also, in as much as the fork device per se is not a positively recited element of the instant claimed combination, the functional/positional language relating thereto is given little patentable weight.

4. Claims 1, 3, and 5-6, as newly amended, are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson.

Johnson (figure 3) teaches a support structure for a transport vehicle including a frame base 46+, a stanchion 56,58+, and a cylindrical roller 70.

Regarding claim 1, the roller is capable of performing the recited function as broadly claimed. Additionally, in as much as the concrete section per se is not a positively recited element of the instant claimed combination, the functional/positional language relating thereto is given little patentable weight. Regarding the newly added language of claim 1, at least a lower one of the elements 56 (note figure 9 etc) could be used as a support for a leg of a concrete section. Element 56 is movable between first and second positions as broadly recited via the pivot bearing assembly and is readable on a supporting pad as newly broadly claimed. Again note, the device is capable of

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functioning as broadly recited, and in as much as the concrete section per se is not a positively recited element of the instant claimed combination, the functional/positional language relating thereto is given little patentable weight

Regarding claim 3, note the roller assembly pivot as shown in phantom in figure 3.

Claim 5, the device is configured as broadly claimed.

Claim 6, note the angle represented in figure 3 is about 10 degrees as broadly claimed.

5. Claims 27 and 30-34, as newly presented, are rejected under 35 U.S.C. 102(b) as being anticipated by Paraskewik.

Note frame base 11, stanchion 24+, and roller 34 defining a rotational axis parallel to a base plane and perpendicular to a stanchion axis as broadly claimed.

Regarding new claim 27, the roller is capable of performing the recited function as broadly claimed. Additionally, in as much as the concrete section per se is not a positively recited element of the instant claimed combination, the functional/positional language relating thereto is given little patentable weight.

Claim 30, alternatively reading roller 32 on the cylindrical roller, the roller is pivotable between first and second positions as broadly claimed – note phantom position in figure

2. Again note, the structure is capable of performing the recited function, and in as much as the concrete section per se is not a positively recited element of the instant claimed combination, the functional/positional language relating thereto is given little patentable weight

Claim 31, the illustrated angle of movement is about 10 degrees as broadly claimed.

Claim 32, at least the elongated passages below elements 40 (note figure 1) could receive forks as broadly recited. Note also, in as much as the forks per se are not positively recited elements of the instant claimed combination, the functional/positional language relating thereto is given little patentable weight.

Claim 33, at least element 32 reads on a first bearing pad as broadly claimed and would be capable of supporting a leg as recited. Note also, in as much the concrete section per se is not a positively recited element of the instant claimed combination, the functional/positional language relating thereto is given little patentable weight.

Claim 34, at least element 33 would define a second bearing pad as broadly claimed. Such second pad is deemed removably connected as broadly recited.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson.

Claim 4, Johnson teaches all of the claimed features as discussed regarding claim 1 above but fails to specifically teach use of a spherical bearing for connecting the roller. Spherical bearings per se are known in the art. In order to provide more system flexibility by allowing more pivot directions, it would have been obvious to one of ordinary skill in the art to replace the single axis roller pivot of Johnson with a spherical bearing pivot in view of known art practices.

Claim 6, Johnson teaches all of the claimed features as discussed above regarding claim 6 in the section 102 rejection. Additionally as noted above, Johnson teaches a pivot angle of about 10 degrees as noted above – note figure 3 phantom lines. If the angle taught by Johnson is not deemed to define about 10 degrees, then the following applies. The exact pivot angle of the roller assembly would be driven by a desired amount of adjustability of the rollers for a given application. Specific recitation of a pivot angle of about 10 degrees in this case then would not define a patentably distinct departure from the teachings of Johnson.

9. Claims 28 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claims 35-40 are allowed.

11. Applicant's arguments filed 3-13-06 have been fully considered but they are not persuasive. The relied upon Giles and Johnson references are deemed to include elements fairly readable on the newly recited support pad as broadly claimed.

Additionally, as noted above, in as much as the relied upon prior art elements are capable of performing the recited function as broadly claimed and in as much as the concrete section per se is not a positively recited element of the instant claimed combination, the functional/positional language relating thereto is given little patentable weight.

In general with regard to the rejected claims, applicant's newly added language is beginning to move toward patentable subject matter. However, the claim language is still deemed sufficiently broad such that the prior art is fairly readable thereon as detailed above.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

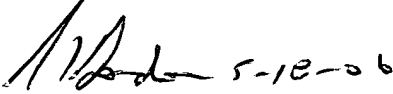


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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (571) 272-6661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Stephen Gordon  
Primary Examiner  
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stg